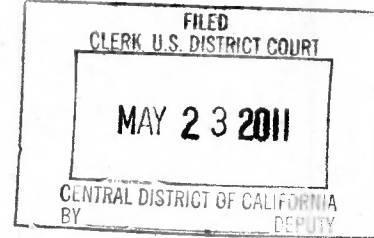


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 CHRISTOPHER CRAIG, ABRAHAM AGUAYO,  
 and JAIME ANDRADE

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

CHRISTOPHER CRAIG, ABRAHAM  
 AGUAYO, and JAIME ANDRADE,

Plaintiffs,

vs.

CITY OF KING CITY, a municipal  
 corporation; NICK BALDIVIEZ,  
 individually and as Chief of Police for  
 the King City Police Department;  
 MICHAEL POWERS, individually and  
 as City Manager for the King City;  
 MARK BAKER, individually and as  
 Sergeant for the King City Police  
 Department; JERRY HUNTER  
 individually and as "acting" Sergeant  
 for the King City Police Department;  
 MYRNA GLICK individually, and as  
 an agent for King City; THE  
 STEWART, LLC, dba Aaron's Sales  
 and Lease; and DOES 1 THROUGH  
 10 INCLUSIVE,

Defendants.

Case No.

**CV 11-04399** GHK (AGPX)

**COMPLAINT FOR DAMAGES AND  
 INJUNCTIVE RELIEF:**

1. Violation of Civil Rights, 42 U.S.C. § 1983
2. Violation of 42 U.S.C. §12112(a), Discrimination based on regarded as disability.
3. Violation of 42 U.S.C. §12203 Retaliation for opposing unlawful practice.
4. Violation of 42 U.S.C. §12112(d)(4)(A) Unlawful Order for Fitness FFDE
5. Violation of MMBA, CA Gov't Code §§3502, 3506; CCP §1085
6. Violation of POBOR, CA Gov't Code §§3302; 3309.5.
7. Violation of CMIA, CA Civil Code §§56.35; 56.36
8. Violation of CMIA, CA Civil Code §56.20.
9. Violation of Robbins-Rosenthal FDCPA, CA Civil Code §§ 1788, et seq.
10. Violation of FDCPA, 15 U.S.C. §1692.

**DEMAND FOR JURY TRIAL**  
 F.R. Civ. P. Rule 38; C.D. LR 38-1]

I.

**PREFATORY**

1. This is an action for damages and injunctive relief for personal injury suffered by the Plaintiffs as a result of wrongful retaliation for the lawful exercise of individual civil rights and liberties of free expression and participation in labor, union, and political activities. Defendants also violated various state and federal laws.

II.

**JURISDICTION AND VENUE**

2. Plaintiffs action is authorized by 42 U.S.C. §1983, which provides for redress for the deprivation under color of state law of rights secured by the Constitution and the laws of the United States. Plaintiffs also bring this action under the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* (“ADA”) and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692. Jurisdiction is conferred on this Court by 28 U.S.C. §1343(3), providing for jurisdiction in this Court of suits authorized by 42 U.S.C. §1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States, and by 28 U.S.C. §1343(4), providing for the protection of civil rights, and by 28 U.S.C. §1331, which gives district courts original jurisdiction over civil actions arising under the constitution, laws or treaties of the United States. Federal supplemental jurisdiction over the state law claims is conferred by 28 U.S.C. §1367. This Court has authority to provide declaratory and injunctive relief in this case pursuant to 28 U.S.C. §§2201 and 2202. Venue is proper in the Central District of California pursuant to 42 U.S.C. §1391(b), as one of the named defendants resides within the Central District.

### III.

#### PARTIES

3. Plaintiff CHRIS CRAIG was, at all times relevant to this claim unless otherwise mentioned herein, employed by Defendant CITY OF KING CITY in the capacity of Police Officer with the King City Police Department, and as such is entitled to the benefits and protections of the Public Safety Officers Procedural Bill of Rights ("POBOR") Act, Government Code section 3300 et seq. Plaintiff's home address is confidential under Penal Code §§146(e) and 832.7, and Vehicle Code §1808.4(a)(11).

4. Plaintiff ABRAHAM AGUAYO was, at all times relevant to this claim unless otherwise mentioned herein, employed by Defendant CITY OF KING CITY in the capacity of Police Officer with the King City Police Department, and as such is entitled to the benefits and protections of the Public Safety Officers Procedural Bill of Rights ("POBOR") Act, Government Code section 3300 et seq. Plaintiff's home address is confidential under Penal Code §§146(e) and 832.7, and Vehicle Code §1808.4(a)(11).

5. Plaintiff JAIME ANDRADE was, at all times relevant to this claim unless otherwise mentioned herein, employed by Defendant CITY OF KING CITY in the capacity of Police Officer with the King City Police Department, and as such is entitled to the benefits and protections of the Public Safety Officers Procedural Bill of Rights ("POBOR") Act, Government Code section 3300 et seq. Plaintiff's home address is confidential under Penal Code §§146(e) and 832.7, and Vehicle Code §1808.4(a)(11).

6. Defendant CITY OF KING CITY ("the City") is a duly constituted municipal corporation operating under the laws of the State of California, wholly situated in the County of Monterey. The King City Police Department ("the Department") is an operating department of the City. At all times relevant herein for all purposes connected with the management of

1 employment relations matters within the King City Police Department, the City  
2 delegated its final policy-making authority to Defendant BALDIVIEZ and  
3 Defendant POWERS. City adopted and ratified each of his decisions as alleged  
4 herein as its own policies, customs, practices or decisions, as if the same had been  
5 promulgated directly by the City. Defendant CITY OF KING CITY is a covered  
6 entity for the purposes of the ADA pursuant to 42 U.S.C. §12111.

7 7. Defendant NICK BALDIVIEZ ("BALDIVIEZ") was, at all times  
8 relevant to this action, except as otherwise mentioned, the Chief of Police for the  
9 King City Police Department. In doing the things alleged herein, BALDIVIEZ  
10 acted under color of state law, within the course and scope of his employment, and  
11 as an official policy-maker for the City. As a Department Head, BALDIVIEZ was  
12 vested with policy-making authority over actions such as the ones at issue in this  
13 complaint.

14 8. Defendant MICHAEL POWERS ("POWERS") was, at all times  
15 relevant to this action, except as otherwise mentioned, the City Manager for King  
16 City. In doing the things alleged herein, POWERS acted under color of state law,  
17 within the course and scope of his employment, and as an official policy-maker for  
18 the City. As a City Manager, POWERS was vested with policy-making authority  
19 over actions such as the ones at issue in this complaint.

20 9. Defendant MARK BAKER ("BAKER") was, at all times relevant to  
21 this action, except as otherwise mentioned, Sergeant for the King City Police  
22 Department. In doing the things alleged herein, BAKER acted under color of state  
23 law, within the course and scope of his employment, and as an official policy-  
24 maker for the City.

25 10. Defendant JERRY HUNTER ("HUNTER") was, at all times relevant  
26 to this action, except as otherwise mentioned, acting Sergeant for the King City  
27 Police Department. In doing the things alleged herein, HUNTER acted under color  
28

1 of state law, within the course and scope of his employment, and as an official  
2 policy-maker for the City.

3 11. Defendant MYRNA GLICK ("GLICK") may be considered an  
4 employee of the City, as, at all times she acted as a servant and agent of the City.  
5 She was employed/authorized by the City to conduct a fitness for duty examination  
6 ("FFDE") of Plaintiff, CRAIG. In doing the things alleged herein, GLICK acted  
7 under color of state law, within the course and scope of her employment, as a  
8 servant and agent of the City.

9 12. Defendant, THE STEWART, LLC, dba Aaron's Sales and Lease  
10 ("STEWART"), is a leasing company that conducts business at 1557 North  
11 Sanborn Rd, Salinas, CA, 93905. Leticia Diaz is the general manager for  
12 STEWART and is authorized to enter into contracts on behalf of STEWART.  
13 Leticia Diaz acted in the course and scope of said agency, service and employment  
14 with STEWART at all relevant times

15 13. Defendant DOES 1 through 10 are not known or identified at this  
16 time. On information and belief, Plaintiffs alleges that each Doe is in some  
17 manner responsible for the wrongs alleged herein, and that each such Defendant  
18 advised, encouraged, participated in, ratified, directed, or conspired to do, the  
19 wrongful acts alleged herein. When the true names and capacities of said  
20 Defendants become known, Plaintiffs will seek relief to amend this Complaint to  
21 show their true identities in place of their fictitious names as DOES 1 through 10.

22 **IV.**

23 **FACTS COMMON TO ALL COUNTS**

24 14. In or about March 2005, Plaintiff CHRIS CRAIG was hired by King  
25 City as a Police Officer. While at all times employed by the Department, Plaintiff  
26 performed his duties competently and without difficulty.  
27  
28

1       15.       In or about January 2007, Plaintiff ABRAHAM AGUYAO was hired  
2 by King City as a Police Officer. While at all times employed by the Department,  
3 Plaintiff performed his duties competently and without difficulty.

4       16.       In or about November 2007, Plaintiff JAIME ANDRADE was hired  
5 by King City as a Police Officer. While at all times employed by the Department,  
6 Plaintiff performed his duties competently and without difficulty.

7                               ***Plaintiffs Protected Activities***

8       17.       In or about April 3, 2010, Plaintiff CRAIG was elected President of  
9 the King City Police Officer's Association ("the Association" or "POA"). Since  
10 that time, Plaintiff CRAIG has actively taken part in numerous speech, labor, and  
11 political activities in his capacity as President of the Association, and as a general  
12 member.

13       18.       In or about April 3, 2010, Plaintiff ANDRADE was elected Treasurer  
14 of the King City Police Officer's Association. Since that time, Plaintiff  
15 ANDRADE has actively taken part in numerous speech, labor, and political  
16 activities in his capacity as Treasurer of the Association, and as a general member.

17       19.       In or about August 2010, Plaintiff AGUAYO was elected Vice  
18 President of the King City Police Officer's Association. Plaintiff AGUAYO has  
19 actively taken part in numerous speech, labor, and political activities in his  
20 capacity as Vice President of the Association, and as a general member prior to his  
21 election to Vice President.

22       20.       In or about July 30, 2010, in his capacity as POA President, Plaintiff  
23 CRAIG wrote a memorandum to Defendant, POWERS, indicating that the King  
24 City POA gave Defendant, Chief BALDIVIEZ, a vote of 'no confidence.' The  
25 memorandum was circulated to all the King City POA members for approval prior  
26 to the vote. Plaintiffs CRAIG, ANDRADE, and AGUAYO all voted in favor of the  
27 'no confidence' memorandum. The vote was based on numerous incidents that  
28 occurred over an 18 month period. Information contained in the memorandum was

1 ultimately broadcasted to the public by local TV stations and printed in local  
2 newspapers.

3 21. According to the July 30, 2010 memorandum, the King City POA was  
4 concerned that a probationary officer was released from the job for reasons other  
5 than performance and Defendant BALDIVIEZ' selection of the replacement  
6 officer occurred under suspicious circumstances. Specifically, Defendant  
7 BALDIVIEZ did not notify all the senior reserve officers that a position was  
8 available and instead, unilaterally appointed a reserve officer of his choice almost  
9 immediately following the release of the probationary employee. The probationary  
10 officer was released on Sunday, July 25, 2010 and the reserve officer began  
11 working as a full time officer on Monday, July 26, 2010. The normal process for  
12 promoting a reserve officer was not followed by Defendant BALDIVIEZ.  
13 Furthermore, the probationary officer appeared to be a very good officer and in  
14 fact, just before his release from probation, he had located and arrested a shooting  
15 suspect. The King City POA members and Plaintiffs CRAIG, ANDRADE, and  
16 AGUAYO were concerned about Defendant Baldiviez' motives for releasing the  
17 probationary officer and appointing the new officer.

18 22. Plaintiffs CRAIG, ANDRADE, and AGUAYO were also concerned  
19 that Defendant BALDIVIEZ discriminated against officers who may have been (or  
20 were perceived to be) overweight in violation of the ADA. The state and federal  
21 laws are designed to protect employees from discrimination and harassment based  
22 on actual or perceived physical disabilities.

23 23. Plaintiffs CRAIG and ANDRADE were required to participate in the  
24 weight loss program under threat of termination by Defendant BALDIVIEZ. They  
25 were forced to participate in the program despite the fact that a medical doctor  
26 reported to Defendant BALDIVIEZ that CRAIG and ANDRADE were fit for duty.  
27 When CRAIG later spoke with Defendant BALDIVIEZ, Defendant BALDIVIEZ  
28 responded, "You are fit to exercise." Based on information and belief, private

1 information about CRAIG and ANDRADE was released to King City by the  
2 medical doctor that completed the initial examinations.

3 24. Plaintiff CRAIG was placed on a weight loss program and ordered to  
4 lose at least eight pounds a month. One month CRAIG did not make the weight  
5 loss as dictated by Defendant BALDIVIEZ and he was given a letter of discussion.

6 25. Despite the Defendants perception that CRAIG was overweight, he  
7 demonstrated that he was fit to work as a police officer. On one occasion, CRAIG  
8 successfully jumped approximately ten six foot fences with his patrol rifle to clear  
9 residential back yards for a shooting suspect. Nevertheless, he was still kept on the  
10 weight loss program. Capt. Bruce Miller asked the City Manager, Defendant  
11 POWERS, if CRAIG was going to be kept on the weight loss program even though  
12 he had performed his duties by jumping so many fences and Defendant POWERS  
13 responded that CRAIG was going to stay on the weight loss program because  
14 public perception was that CRAIG was overweight. A couple of months later,  
15 when a "fit" officer went out on medical for a month for a heart condition, CRAIG  
16 informed Chief Baldiviez he was seeking legal counsel regarding the weight loss  
17 program.

18 26. Plaintiff CRAIG told Defendant BALDIVIEZ that the mandated  
19 weight loss program violated state and federal laws. After Plaintiff CRAIG  
20 reported the law violations to Defendant BALDIVIEZ and indicated that the  
21 officers in the weight loss program, including Plaintiff ANDRADE, were going to  
22 seek legal counsel, the mandated weight loss program, quickly ceased.

23 27. In March of 2011, Plaintiffs CRAIG and ANDRADE requested and  
24 received copies of their personnel files and all the documents referencing the  
25 weight loss program were removed. Based on information and belief, Defendants  
26 POWERS and BALDIVIEZ destroyed the records related to the weight loss  
27 program in order to hide their illegal acts.  
28

1       28.       Plaintiffs CRAIG and ANDRADE were subjected to adverse  
2 employment actions in retaliation for reporting the law violations to Defendant  
3 BALDIVIEZ.

4       29.       Furthermore, Plaintiffs CRAIG, AGUAYO, and ANDRADE, have  
5 been subjected to adverse employment actions in retaliation for their collective  
6 report of the above law violations in the July 30, 2010 vote of no confidence  
7 memo.

8       30.       Via the July 30, 2010 vote of 'no confidence' against Defendant  
9 BALDIVIEZ, Plaintiffs CRAIG, ANDRADE, and AGUAYO also expressed their  
10 concern about Defendant BALDIVIEZ arriving to crime scenes intoxicated.

11       31.       According to the July 30, 2010 memorandum, Defendant  
12 BALDIVIEZ arrived at crimes scenes intoxicated. One of the incidents occurred  
13 on Beech Street. Defendant BALDIVIEZ showed up to a shooting and he appeared  
14 to be under the influence of alcohol. A strong odor of alcohol emitted from his  
15 breath, and his eyes were red and watery. Defendant POWERS was also present  
16 with Defendant BALDIVIEZ. An on-scene Sergeant was notified and he notified  
17 the on-scene Captain.

18       32.       On or about March 3, 2010, Defendant BALDIVIEZ showed up to  
19 another shooting and he appeared to be under the influence of alcohol.  
20 A strong odor of alcohol emitted from his vehicle. A strong odor of alcohol emitted  
21 from his breath, and his eyes were red and watery. Defendant BALDIVIEZ took it  
22 upon himself to aggressively interview one of the witnesses. He stepped in blood at  
23 the crime scene and yelled at witnesses. Once again, an on-scene Sergeant was  
24 notified.

25       33.       Defendant POWERS stated to the King City Police Officers at a  
26 briefing that if anyone says anything bad about Defendant BALDIVIEZ he  
27 (POWERS) is going to take it personal. Defendant POWERS stated he would fire  
28 employees for saying anything bad about Defendant BALDIVIEZ.

1       34.       On August 4, 2010, Plaintiff CRAIG wrote a memo on behalf of the  
2 King City POA to Defendant POWERS that they were standing firm with the prior  
3 vote of no confidence in the Chief.

4       36.       On August 9, 2010, Plaintiff CRAIG wrote a memo on behalf of the  
5 King City POA to Defendant POWERS objecting to the fact that Defendant  
6 POWERS was going to conduct the Internal Affairs investigation of Defendant  
7 BALDIVIEZ. In the memorandum, Claimant CRAIG reported that Defendant  
8 POWERS said he would take it personal if anyone says anything bad about  
9 Defendant BALDIVIEZ. Defendant POWERS stated he would fire employees for  
10 saying anything bad about Defendant BALDIVIEZ. Defendant POWERS also  
11 made false comments to the media, accusing the King City POA of exploiting the  
12 issue because they were in contract negotiations. Finally, the King City POA  
13 believed that it was inappropriate for Defendant POWERS to conduct the Internal  
14 Affair investigation because he was a witness to at least one of the incidents where  
15 Defendant BALDIVIEZ allegedly arrived at a crime scene intoxicated.

16       37.       On August 19, 2010, the City Attorney, Roy Hanley, wrote Plaintiff  
17 CRAIG a critical response and questioned his motives for the vote of no  
18 confidence. Mr. Hanley stated that, “[i]t is rumored that the vote was with only five  
19 members present, with only three voting in favor.” The letter went on to state, “[i]f  
20 you were just seeking impartial justice, you would not have issued a press release  
21 and appeared on television in an apparent effort to get the chief fired. Those are the  
22 actions of persons who want a predetermined result. Those are not the actions of  
23 someone or an organization that is only seeking impartial justice.” This letter was  
24 cc’d to Defendant POWERS and the City Council. It’s no coincidence that all three  
25 King City POA Board members that voted in favor of the vote of no confidence  
26 against Defendant BALDIVIEZ found themselves to be the subject of internal  
27 affairs investigations within eleven days of Defendant BALDIVIEZ’ return to  
28 work, following administrative leave. Based on information and belief, Defendant

1 BALDIVIEZ also stated that he had “something in the works” for the person (or  
2 persons) responsible for exposing his misconduct.

3 ***Retaliation, Discrimination, Harassment***

4 38. On September 14, 2010, Defendant BALDIVIEZ returned to work  
5 following the internal investigation and administrative leave.

6 39. The very next day (September 15, 2010) Defendant BALDIVIEZ  
7 authorized an internal affairs investigation of Plaintiff ANDRADE for an incident  
8 that had occurred six months earlier. Based on information and belief, the  
9 investigation was initiated in retaliation for Plaintiff ANDRADE engaging in  
10 protected activities.

11 40. Ten days after his return to work (September 24, 2010), Defendant  
12 BALDIVIEZ initiated an Internal Affairs investigation of Plaintiff CRAIG for a  
13 minor incident that occurred on September 17, 2010. The incident was initiated by  
14 Defendant BAKER, and, based on information and belief it was initiated in  
15 retaliation for Plaintiff CRAIG’s protected  
16 activities. Just one month earlier, Defendant BAKER made it clear to the City  
17 Council that he did not agree with the King CITY POA vote of no confidence.

18 41. The September 17, 2010 incident involved an allegation that Plaintiff  
19 CRAIG took too long (approx. 20 minutes) to transport a suspect to jail and return  
20 to King City. This incident was pursued by Defendant BAKER.

21 42. On or about September 27, 2010, Defendant BALDIVIEZ initiated  
22 another Internal Affairs investigation of Plaintiff CRAIG for another minor  
23 incident. The second incident occurred on September 25, 2010 and it involved an  
24 allegation that Plaintiff CRAIG used profanity with HUNTER. Specifically, when  
25 two police reports were returned to Plaintiff CRAIG by HUNTER to correct,  
26 Plaintiff CRAIG entered into HUNTER’s office and said, “What the fuck is up  
27 with this shit?” HUNTER stated, “[e]xcuse me?” Plaintiff CRAIG quickly  
28 responded, “[m]aybe I should start over again.” Hunter responded, “[t]hat would

1 be a good idea.” Plaintiff Craig then went on to explain why the reports should not  
2 have been sent back in a very respectful manner. CRAIG later apologized to  
3 HUNTER after he saw that his use of profanity offended him. The incident was  
4 initiated by Defendant HUNTER, and, based on information and belief, that it was  
5 initiated in retaliation for Plaintiff CRAIG’s protected activities. Just one month  
6 earlier, Defendant HUNTER made it clear to the City Council that he did not agree  
7 with the King CITY POA vote of no confidence.

8 43. Based solely on the incidents above Defendant BALDIVIEZ  
9 ultimately ordered Plaintiff CRAIG to undergo an intrusive psychological  
10 examination. This referral was made, even though Claimant CRAIG’s annual  
11 evaluation (completed September 19, 2010) was positive and devoid of any  
12 concern that CRAIG was unable to perform the duties of a police officer.

13 44. On September 25, 2010, with the assistance of Defendant HUNTER,  
14 Defendant BALDIVIEZ opened an internal affairs investigation on the King City  
15 Vice President, Plaintiff, AGUAYO. Defendant HUNTER went out of his way to  
16 make sure that the complaining party filed a complaint against AGUAYO, and he  
17 even personally delivered the complaint to the reporting party’s home that was  
18 located approximately 50 miles away from the City of King and the King City  
19 Police Department’s jurisdiction. This investigation was initiated just eleven days  
20 after BALDIVIEZ’ returned to work.

21 45. Plaintiff AGUAYO was immediately placed on administrative leave  
22 and ordered not to enter any City property or to have any contact with any City  
23 employee, in any manner. The scope of this order violated the First Amendment,  
24 the Meyers Miliias Brown Act, and Peace Officer’s Procedural Bill of Rights.  
25 Public employees have the right to participate in union activities without  
26 interference by their employer. This order effectively prevented Plaintiff  
27 AGUAYO from any POA activities and from associating with all city employees.  
28

1       46.       On September 25, 2010, Defendant BALDIVIEZ issued a memo to all  
2 employees with the King City Police Department that Plaintiff AGUAYO was  
3 placed on administrative leave and ordered not to have any contact with any  
4 employee. If anyone had any contact with Plaintiff AGUAYO they were to notify  
5 Defendant BALDIVIEZ immediately. The scope of this order clearly violated the  
6 First Amendment, the Meyers Miliars Brown Act, and Peace Officer's Procedural  
7 Bill of Rights. Public employees have the right to participate in union activities.  
8 This order effectively prevented all employees from having any sort of contact  
9 with Plaintiff AGUAYO.

10       47.       In October 2010, Defendant BALDIVIEZ allegedly received a  
11 call from Leticia Diaz, a manager of STEWART dba Aaron's Sales and Lease, and  
12 she stated that Plaintiff AGUAYO was behind in his payments. This release of  
13 information violated the Robbins-Rosenthal Fair Debt Collections Practices Act,  
14 Civil Code §1788 et. seq. and the Fair Debt Collection Practices Act, 15 U.S.C.A.  
15 §1692.

16       48.       One week later Defendant BALDIVIEZ allegedly contacted Diaz and  
17 discovered that Plaintiff ANDRADE came in and cosigned for the property on  
18 behalf of Plaintiff AGUAYO. Leticia Diaz subsequently released Plaintiff  
19 ANDRADE's private information, violating the Information Practices Act of 1977,  
20 Civil Code §§ 1798 et. seq.

21       49.       On October 2010 Plaintiff CRAIG drafted a memo to Captain Miller  
22 stating that it was a hostile work environment working under the supervision of  
23 BAKER and HUNTER, and he requested a transfer. Defendant BALDIVIEZ  
24 denied his request and he stated there was no ground for CRAIG's claim, but stated  
25 that the request would be considered during the next shift change in January 2011.  
26 In the proposed January 2011 schedule Defendant BALDIVIEZ moved Plaintiff  
27 CRAIG from BAKER's shift to HUNTER's shift.

1        50.        On November 22, 2010, Plaintiff ANDRADE was notified of an  
2 internal affairs investigation that was based on the allegation that he violated the no  
3 contact order. Defendant BALDIVIEZ also initiated another internal affairs  
4 investigation of Plaintiff AGUAYO for violating his order not to have any contact  
5 with a City employee for any reason.

6        51.        On December 7, 2010 Defendant BALDIVIEZ, without a reasonable  
7 basis and in violation of the Americans with Disabilities Act (42 U.S.C. §21112),  
8 ordered Plaintiff CRAIG to undergo an intrusive fitness for duty examination. This  
9 order was based on the alleged misconduct that occurred September 17th and 25th.

10       52.       Plaintiff CRAIG refused to consent to the release of protected medical  
11 and mental health records compiled by Defendant GLICK to Defendant  
12 BALDIVIEZ. Based on information and belief, this angered the Defendants and it  
13 provided an additional motive for retaliation.

14       53.       On December 31, 2010, Plaintiff CRAIG was placed on  
15 administrative leave do to Dr. Glick's finding that Claimant Craig was allegedly  
16 not fit.

17       54.       On January 3, 2011, Plaintiff CRAIG consented to the release of  
18 information by Dr. Glick only to the extent that she was already authorized to  
19 release by law [California Civil Code §56.10 (c)(8)]. Plaintiff CRAIG did not  
20 consent to the release of detailed privileged psychological information. Despite the  
21 restricted scope of consent, Dr. Glick, unlawfully released confidential information  
22 in her report dated January 19, 2011. This blatant disregard of Claimant CRAIG's  
23 right to privacy and right to limit the scope of protected private information [see  
24 the Confidentiality of Medical Information Act, Civil Code §§56 et. seq.]  
25 demonstrated that Dr. Glick is not a neutral psychologist and is instead, performing  
26 retaliatory acts against Plaintiff CRAIG, on behalf of Defendant BALDIVIEZ, and  
27 as an agent of Defendant KING CITY.  
28

1       55.       On January 18, 2011, Defendant BALDIVIEZ notified Plaintiff  
2 ANDRADE that he was going to be suspended for two days for allegedly violating  
3 his no contact order.

4       56.       On January 24, 2011, Defendant BALDIVIEZ opened yet another  
5 Internal Affairs investigation of Plaintiff AGUAYO.

6       57.       On January 27, 2011, Defendant BALDIVIEZ opened yet another  
7 Internal Affairs investigation of Plaintiff ANDRADE.

8       58.       On February 7, 2011, Defendant BALDIVIEZ terminated Plaintiff  
9 CRAIG based on the findings of Dr. Glick that Plaintiff CRAIG was not fit for  
10 duty.

11       59.       Plaintiff CRAIG strongly disagreed with Dr. Glick's findings and, in  
12 fact, just days prior to the examination by Dr. Glick, he was examined by a  
13 qualified psychologist and was found to be fit.

14       60.       Defendant BALDIVIEZ relied on a severely deficient report from Dr.  
15 Glick that failed to mention any functional limitations and/or reasonable  
16 accommodations.

17       61.       Defendant BALDIVIEZ failed to consider the fact that Plaintiff  
18 CRAIG was found fit by a qualified psychologist who evaluated Plaintiff CRAIG  
19 just days before Dr. Glick. Defendant BALDIVIEZ declined to consider any  
20 accommodations. Defendant BALDIVIEZ relied on private information  
21 unlawfully release by Dr. Glick, in violation of state law.

22       62.       Finally, Defendant BALDIVIEZ' hatred and ill will for Plaintiff  
23 CRAIG continued on after the improper discharge. Despite the fact that Defendant  
24 BALDIVIEZ stated in his Notice of Termination that the termination of Plaintiff  
25 CRAIG was not based on misconduct, Defendant BALDIVIEZ personally  
26 appeared before an Administrative Law Judge for the California Unemployment  
27 Appeals Board in a failed effort to prevent Plaintiff CRAIG from collecting  
28 unemployment benefits. Defendant BALDIVIEZ' appeared before Administrative

1 Law Judge Carlson on May 3 and admitted that in his Notice of Termination he  
 2 stated that the termination was not based on misconduct. Unemployment Insurance  
 3 Code Section 1256 states in part that “[a]n individual is disqualified for  
 4 unemployment compensation benefits if the director finds that he or she left his or  
 5 her most recent work voluntary without good cause or that he or she has been  
 6 discharged for misconduct connected with his or her most recent work.”  
 7 Because Plaintiff CRAIG was not terminated for misconduct, Judge Carlson did  
 8 not understand why Defendant BALDIVIEZ was appealing the decision to allow  
 9 Plaintiff CRAIG to receive unemployment benefits. In a written Opinion, dated  
 10 May 6, 2011, Judge Carlson found that Plaintiff CRAIG was not disqualified from  
 11 receiving unemployment benefits pursuant to Unemployment Insurance Code  
 12 Section 1256, because he was not terminated for misconduct. Defendant  
 13 BALDIVIEZ’ behavior is especially egregious because he knows that Plaintiff  
 14 CRAIG is currently struggling to provide for his family (including his two month  
 15 old baby) and Defendant BALDIVIEZ continues to do everything in his power to  
 16 injure Plaintiff CRAIG, even if his position has no basis in law or fact.

17 63. On March 7, 2011, Defendant BALDIVIEZ terminated Plaintiff  
 18 AGUAYO.

19 64. On March 31, 2011, Plaintiff Andrade received a Notice of Intent to  
 20 Suspend for three days, based on the internal affair investigation initiated on  
 21 January 27, 2011.

22 65. In engaging in the aforementioned actions, Plaintiffs CRAIG,  
 23 ANDRADE, and AGUAYO exercised their rights under state and federal law,  
 24 including those to free speech, free association, the right to seek redress through  
 25 petition, the right to engage in political activities and to report wrongdoing,  
 26 corruption and other important information. Plaintiffs CRAIG, ANDRADE, and  
 27 AGUAYO also exercised their rights under POBOR, MMBA, ADA, as well as  
 28 their rights to privacy and confidentiality [See the Robbins-Rosenthal Fair Debt

1 Collections Practices Act, Civil Code §1788 et. seq; and the Fair Debt Collection  
2 Practices Act, 15 U.S.C.A. §1692; the Information Practices Act of 1977, Civil  
3 Code §§ 1798 et. seq; and the Confidentiality of Medical Information Act, Civil  
4 Code §§56 et. seq.] At all times, Plaintiffs CRAIG, ANDRADE, and AGUAYO  
5 actions and conduct  
6 were protected.

7 66. On February 25, 2011, Plaintiffs mailed a detailed Tort Claim to the  
8 King City Clerk in compliance with the Government Claims Act. Forty-five days  
9 has past and the City has not served Plaintiffs a rejection letter.

10 67. On March 8, 2011, Plaintiff CRAIG filed a complaint with the U.S.  
11 Equal Employment Opportunity Commission ("EEOC") alleging violations of the  
12 Americans with Disabilities Act ("ADA"). The EEOC mailed the Right to Sue  
13 Notice on March 10, 2011. This lawsuit was filed within the 90 day time period  
14 outlined in the Notice of Right to Sue letter.

15 68. On March 8, 2011, Plaintiff AGUAYO filed a complaint with the  
16 U.S. Equal Employment Opportunity Commission ("EEOC") alleging a violation  
17 of the Americans with Disabilities Act ("ADA"). The EEOC mailed the Right to  
18 Sue Notice on March 18, 2011. This lawsuit was filed within the 90 day time  
19 period outlined in the Notice of Right to Sue letter.

20 69. On March 8, 2011, Plaintiff ANDRADE filed a complaint with the  
21 U.S. Equal Employment Opportunity Commission ("EEOC") alleging violations  
22 of the Americans with Disabilities Act ("ADA"). The EEOC mailed the Right to  
23 Sue Notice on March 10, 2011. This lawsuit was filed within the 90 day time  
24 period outlined in the Notice of Right to Sue letter.

25 V.

26 CAUSES OF ACTION

27 COUNT ONE

28 *42 U.S.C. 1983*

***Plaintiffs CRAIG, ANDRADE, and AGUAYO against Defendants CITY OF KING CITY, BALDIVIEZ, POWERS, BAKER, HUNTER, and GLICK***

70. Plaintiffs hereby incorporate each and every proceeding paragraph, as though set forth in full here.

71. Defendants CITY OF KING, BALDIVIEZ, POWERS, BAKER, and HUNTER retaliated against Plaintiff CRAIG by initiating bogus internal affair investigations in order to subject CRAIG to an adverse employment action. Defendants BAKER and HUNTER initiated the bogus internal affair investigations in order to set Plaintiff CRAIG up for and adverse employment action that would later be determined by Defendants BALDIVIEZ and POWERS.

72. Based on information and belief Defendant BALDIVIEZ communicated his hatred for CRAIG to Defendant GLICK in order to convey his preference that she ultimately find CRAIG unfit for duty. Defendant GLICK conducted a sham mental examination; her final report is severely deficient and it does not support her findings. Furthermore, despite having full knowledge that Plaintiff CRAIG did not consent to the release of private information, Defendant GLICK included the information in the report in order to ensure that Plaintiff CRAIG would be subjected to termination by Defendant BALDIVIEZ and POWERS. As a direct result of the Plaintiff CRAIG exercising his constitutional rights to free speech and participating in labor, organizational, social and political activities as a member and President of the Police Officers' Association, Defendants CITY OF KING, BALDIVIEZ, POWERS, BAKER, HUNTER, and GLICK took the aforementioned adverse actions against him. Plaintiff CRAIG also opposed a practice prohibited by the ADA. Absent said protected speech, Plaintiff CRAIG would not have suffered adverse employment actions, and would not have been injured.

1        73. Defendants CITY OF KING, BALDIVIEZ, POWERS, and HUNTER  
2 retaliated against Plaintiff AGUAYO by initiating bogus internal affair  
3 investigations in order to subject AGUAYO to an adverse employment  
4 action, specifically termination. As a direct result of the Plaintiff AGUAYO  
5 exercising his constitutional rights to free speech and participating in labor,  
6 organizational, social and political activities as a member and Vice President  
7 of the Police Officers' Association, Defendants CITY OF KING, BALDIVIEZ,  
8 POWERS, and HUNTER, took the aforementioned adverse actions against him.  
9 Plaintiff AGUAYO also opposed a practice prohibited by the ADA. Absent said  
10 protected speech, Plaintiff AGUAYO would not have suffered adverse  
11 employment actions, and would not have been injured. Plaintiff AGUAYO was  
12 ordered not to enter any City property or to have any contact with any City  
13 employee, in any manner. The scope of this order violated the First Amendment.  
14 Public employees have the right to participate in union activities without  
15 interference by their employer. This order effectively prevented Plaintiff  
16 AGUAYO from any POA activities and from associating with all city employees.

17        74. Defendants CITY OF KING, BALDIVIEZ, POWERS, and BAKER,  
18 retaliated against Plaintiff ANDRADE by initiating bogus internal affair  
19 investigations in order to subject ANDRADE to adverse employment actions,  
20 specifically three different suspensions. As a direct result of the Plaintiff  
21 ANDRADE exercising his constitutional rights to free speech and participating in  
22 labor, organizational, social and political activities as a member and Treasurer of  
23 the Police Officers' Association, Defendants CITY OF KING, BALDIVIEZ,  
24 POWERS, and BAKER, took the aforementioned adverse actions against him.  
25 Plaintiff ANDRADE also opposed a practice prohibited by the ADA. Absent said  
26 protected speech, Plaintiff ANDRADE would not have suffered adverse  
27 employment actions, and would not have been injured.

1       75.       The various acts of intimidation, reprisal, retaliation, suppression  
2 and/or restraint exercised by Defendants CITY OF KING, BALDIVIEZ,  
3 POWERS, BAKER, HUNTER, and GLICK against Plaintiffs have created a  
4 chilling effect on their legitimate political, social and organizational speech by  
5 creating fear, hesitation, hostility and other destructive responses.

6       76.       In doing the things alleged herein, Defendants CITY OF KING,  
7 BALDIVIEZ, POWERS, BAKER, HUNTER, and GLICK, and each of them,  
8 violated the rights of Plaintiffs under the First and Fourteenth Amendments to the  
9 United States Constitution to free expression, association and assembly.  
10 Specifically, Defendants CITY OF KING, BALDIVIEZ, POWERS, BAKER,  
11 HUNTER, and GLICK have taken the aforementioned action against Plaintiffs in  
12 direct retaliation for, and in response to the various protected activities of  
13 Plaintiffs.

14       77.       As a direct and proximate result of the misconduct and unlawful  
15 actions of Defendants, and each of them, Plaintiffs sustained severe and serious  
16 injury to their person, all to Plaintiffs damage in a sum to be shown according to  
17 proof. As a direct and proximate result of the Defendants' conduct, Plaintiffs have  
18 suffered and continues to suffer substantial losses in income, earnings, and benefits  
19 and has been damaged in their capacity to earn their salary, and have lost, and will  
20 continue to lose, employment benefits. Plaintiffs have also suffered pain and  
21 suffering, mental anguish, and emotional distress.

22       78.       Based upon information and belief, the acts and omissions of  
23 Defendants CITY OF KING, BALDIVIEZ, POWERS, BAKER, HUNTER, and  
24 GLICK, and each of them, were done by Defendants under color of state law and  
25 as final policy making authorities to which Defendant CITY OF KING CITY  
26 delegated its governing powers in the subject matter areas in which these policies  
27 were promulgated or decisions taken or customs and practices followed. The acts  
28 and omissions described above were taken by the City's official policy makers as

1 members charged with such responsibility. More specifically, the City's municipal  
2 code vests final policy making authority with regard to promotions and discipline  
3 in the city manager. Furthermore, at all times, and based upon information and  
4 belief, the City's express policy has been for the city manager to delegate such  
5 policy making authority to Defendant BALDIVIEZ, the Department Head and the  
6 City's highest-ranking sworn official. Accordingly, pursuant to City policy and  
7 practice, BALDIVIEZ is delegated and thereby vested with final policy making  
8 authority to make promotions and institute discipline within the Police Department.  
9 This express policy and practice has remained intact for all prior promotions, and  
10 the Chief of Police has been vested with the final word on behalf of the City as to  
11 such decisions.

12 79. It was or should have been plainly obvious to any reasonable policy  
13 making official of City that the acts and omissions of Defendants BALDIVIEZ,  
14 POWERS, BAKER, HUNTER, and GLICK as alleged herein, taking singly or in  
15 conjunction, directly violated and continued to violate Plaintiffs clearly established  
16 constitutional and statutory rights. In doing the things alleged herein, Defendants  
17 BALDIVIEZ, POWERS, BAKER, HUNTER, and GLICK acted with malicious  
18 intent to violate Plaintiffs rights, or at least in conscious, reckless, and callous  
19 disregard of Plaintiffs rights and to the injurious consequences likely to result from  
20 a violation of said rights. General and special damages are sought according to  
21 proof. Punitive damages are sought against the individual defendants, according to  
22 proof.

23 80. Plaintiffs have no plain, speedy or adequate remedy at law to prevent  
24 future violations of their civil rights, and therefore seek extraordinary relief in the  
25 form of permanent injunctions, as hereafter described. Damages alone are  
26 inadequate and injunctive relief is sought to command Defendants to reinstate  
27 Plaintiff CRAIG's and AGUAYO's employment with the City, in order to place  
28

1 them in a position they would have been in, absent the unlawful conduct by  
2 Defendants.

### 3 COUNT TWO

#### 4 **Discrimination based on 'regarded as' disability - severe obesity**

5 **[42 U.S.C. §12102(3); 42 U.S.C. §12112(a)]**

6 ***Plaintiffs CRAIG and ANDRADE against Defendant CITY OF KING CITY.***

7 81. Plaintiffs CRAIG and ANDRADE hereby incorporates each and every  
8 preceding paragraph as though set forth in full here.

9 82. Plaintiffs CRAIG and ANDRADE are employees of Defendant CITY  
10 OF KING CITY, as defined in 42 U.S.C. §12111(4).

11 83. Plaintiffs CRAIG and ANDRADE are "qualified individuals" and the  
12 Defendant CITY OF KING CITY regarded CRAIG and ANDRADE as being  
13 disabled due to perceived severe obesity. See 42 U.S.C. §12102(1)(C); 42 U.S.C.  
14 §12111(8); *U.S. Equal Employment Opportunity Commission v. Resources for*  
15 *Human Development, Inc.*, E.D. La., No. 2:10-cv-03322 (filed Sept. 30, 2010).

16 84. According to 42 U.S.C. §12112(a), "[n]o covered entity shall  
17 discriminate against a qualified individual on the basis of disability in regard to job  
18 application procedure, the hiring, advancement, or discharge of employees,  
19 employee compensation, job training, and other terms, conditions, and privileges  
20 of employment."

21 85. Plaintiffs CRAIG and ANDRADE were discriminated against based  
22 on this perception because they required to participate in a weight loss program  
23 under threat of termination by Defendant BALDIVIEZ. They were forced to  
24 participate in the program despite the fact that a medical doctor reported to  
25 Defendant BALDIVIEZ that CRAIG and ANDRADE were fit for duty. When  
26 CRAIG later spoke with Defendant BALDIVIEZ, Defendant BALDIVIEZ  
27 responded, "You are fit to exercise." Based on information  
28 and belief, private information about CRAIG and ANDRADE was released

1 to King City by the medical doctor that completed the initial examinations.

2 86. Plaintiff CRAIG was placed on a weight loss program and ordered to  
3 lose at least eight pounds a month. One month CRAIG did not make the weight  
4 loss as dictated by Defendant BALDIVIEZ and he was given a letter of discussion.

5 87. Despite the Defendants perception that CRAIG was overweight, he  
6 demonstrated that he was fit to work as a police officer. On one occasion, CRAIG  
7 successfully jumped approximately ten six foot fences with his patrol rifle to clear  
8 residential back yards for a shooting suspect. Nevertheless, he was still kept on the  
9 weight loss program. Capt. Bruce Miller asked the City Manager, Defendant  
10 POWERS, if CRAIG was going to be kept on the weight loss program even though  
11 he had performed his duties by jumping so many fences and Defendant POWERS  
12 responded that CRAIG was going to stay on the weight loss program because  
13 public perception was that CRAIG was overweight. A couple of months later,  
14 when a "fit" officer went out on medical for a month for a heart condition, CRAIG  
15 informed Chief Baldiviez he was seeking legal counsel regarding the weight loss  
16 program.

17 88. Plaintiff CRAIG told Defendant BALDIVIEZ that the mandated  
18 weight loss program violated state and federal laws. After Plaintiff CRAIG  
19 reported the law violations to Defendant BALDIVIEZ and indicated that the  
20 officers in the weight loss program, including Plaintiff ANDRADE, were going to  
21 seek legal counsel, the mandated weight loss program quickly ceased.

22 89. In March of 2011, Plaintiff's CRAIG and ANDRADE requested  
23 received copies of their personnel files and all the documents referencing the  
24 weight loss program were removed. Based on information  
25 and belief, Defendants POWERS and BALDIVIEZ destroyed the records related to  
26 the weight loss program in order to hide their illegal acts.

27 90. Defendant CITY of KING CITY subjected Plaintiff's CRAIG and  
28 ANDRADE to bogus internal affair investigations in order to subject them to

1 subsequent adverse employment actions. Defendants BAKER and HUNTER  
 2 initiated the bogus internal affair investigations in order to set Plaintiffs CRAIG  
 3 and ANDRADE up for an adverse employment action that would later be  
 4 determined by Defendants BALDIVIEZ and POWERS. Plaintiff CRAIG was  
 5 ultimately terminated and ANDRADE was suspended on three separate occasions.

6 91. As a direct and proximate result of the misconduct and unlawful  
 7 actions of Defendants, and each of them, Plaintiffs CRAIG and ANDRADE  
 8 sustained severe and serious injury to their person, all to Plaintiffs damage in a sum  
 9 to be shown according to proof. As a direct and proximate result of the  
 10 Defendants' conduct, Plaintiffs have suffered and continues to suffer substantial  
 11 losses in income, earnings, and benefits and has been damaged in their capacity to  
 12 earn their salary, and have lost, and will continue to lose, employment benefits.  
 13 Plaintiffs have also suffered pain and suffering, mental anguish, and emotional  
 14 distress.

15 92. In doing the things alleged herein, Defendant CITY OF KING CITY  
 16 violated the rights of Plaintiffs CRAIG and ANDRADE protected by the  
 17 Americans with Disabilities Act.

### 18 **COUNT THREE**

#### 19 **Retaliation for reporting/opposing a violation of the ADA**

20 **[42 U.S.C. §12203]**

21 ***Plaintiffs CRAIG, ANDRADE, and AGUAYO against Defendant CITY OF***  
 22 ***KING CITY.***

23 93. Plaintiffs CRAIG, ANDRADE and AGUAYO hereby corporate each  
 24 and every preceding paragraph as though set forth in full here.

25 94. According to 42 U.S.C. §12203(a), "[n]o person shall discriminate  
 26 against any individual because such individual has opposed any act or practice  
 27 made unlawful by this chapter..."  
 28

1        95.        Plaintiffs CRAIG, ANDRADE and AGUAYO opposed the unlawful  
2 weight loss program implemented by Defendant BALDIVIEZ under threat of  
3 termination and they were subjected to adverse employment actions as a result.

4        96.        Defendant CITY OF KING CITY retaliated against Plaintiffs CRAIG,  
5 ANDRADE, and AGUAYO by initiating bogus internal affair investigations in  
6 order to subject them to subsequent adverse employment actions. Defendants  
7 BAKER and HUNTER initiated the bogus internal affair investigations in order to  
8 set Plaintiffs CRAIG, ANDRADE, and AGUAYO up for an adverse employment  
9 actions that would later be determined by Defendants BALDIVIEZ and POWERS.  
10 Plaintiffs CRAIG and AGUAYO were ultimately terminated and ANDRADE was  
11 suspended on three separate occasions.

12        97.        As a direct result of the Plaintiffs CRAIG, ANDRADE, and  
13 AGUAYO exercising their right to oppose discriminatory practices, Defendant  
14 CITY OF KING CITY took the aforementioned adverse actions against them.  
15 Absent said protected activity, Plaintiff CRAIG would not have suffered adverse  
16 employment actions, and would not have been injured.

17        98.        As a direct and proximate result of the misconduct and unlawful  
18 actions of Defendants, and each of them, Plaintiffs sustained severe and serious  
19 injury to their person, all to Plaintiffs damage in a sum to be shown according to  
20 proof. As a direct and proximate result of the Defendants' conduct, Plaintiffs have  
21 suffered and continues to suffer substantial losses in income, earnings, and benefits  
22 and has been damaged in their capacity to earn their salary, and have lost, and will  
23 continue to lose, employment benefits. Plaintiffs have also suffered pain and  
24 suffering, mental anguish, and emotional distress.

25        99.        General and special damages are sought according to proof.

26        100.       Plaintiffs have no plain, speedy or adequate remedy at law to prevent  
27 future violations of their rights under the ADA, and therefore seek extraordinary  
28 relief in the form of permanent injunctions, as hereafter described. Damages alone

are inadequate and injunctive relief is sought to command Defendants to reinstate Plaintiff CRAIG's and AGUAYO's employment with the City, in order to place them in a position they would have been in, absent the unlawful conduct by Defendants.

#### **COUNT FOUR**

##### **Unlawful Order for Fitness for Duty Evaluation**

**[42 U.S.C. §12112(d)(4)(A)]**

##### ***Plaintiff CRAIG against Defendant CITY OF KING CITY.***

101. Plaintiff CRAIG hereby incorporates each and every preceding paragraph as though set forth in full here.

102. According to 42 U.S.C. §21112(d)(4)(A) , "[a] covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity."

103. On September 14, 2010, Defendant BALDIVIEZ returned to work following the internal investigation and administrative leave.

104. Ten days after his return to work (September 24, 2010), Defendant BALDIVIEZ initiated an Internal Affairs investigation of Plaintiff CRAIG for a minor incident that occurred on September 17, 2010. The incident was initiated by Defendant BAKER, and, based on information and belief it was initiated in retaliation for Plaintiff CRAIG's protected activities. Just one month earlier, Defendant BAKER made it clear to the City Council that he did not agree with the King CITY POA vote of no confidence.

105. The September 17, 2010 incident involved an allegation that Plaintiff CRAIG took too long (20 minutes) to transport a suspect to jail. This incident was pursued by Defendant BAKER.

1        106.        On or about September 27, 2010, Defendant BALDIVIEZ initiated  
2 another Internal Affairs investigation of Plaintiff CRAIG for another minor  
3 incident. The second incident occurred on September 25, 2010 and it involved an  
4 allegation that Plaintiff CRAIG used profanity with HUNTER. Specifically, when  
5 two police reports were returned to Plaintiff CRAIG by HUNTER to correct,  
6 Plaintiff CRAIG entered into HUNTER's office and said, "What the fuck is up  
7 with this shit?" HUNTER stated, "[e]xcuse me?" Plaintiff CRAIG quickly  
8 responded, "[m]aybe I should start over again." Hunter responded, "[t]hat would  
9 be a good idea." Plaintiff Craig then went on to explain why the reports should not  
10 have been sent back in a very respectful manner. CRAIG later apologized to  
11 HUNTER after he saw that his use of profanity offended him. The incident was  
12 initiated by Defendant HUNTER, and, based on information and belief, it was  
13 initiated in retaliation for Plaintiff CRAIG's protected activities. Just one month  
14 earlier, Defendant HUNTER made it clear to the City Council that he did not agree  
15 with the King CITY POA vote of no confidence.

16        107.        Based solely on the incidents above Defendant BALDIVIEZ  
17 ultimately ordered Plaintiff CRAIG to undergo an intrusive psychological  
18 examination. This referral was made, even though Plaintiff CRAIG's annual  
19 evaluation (completed September 19, 2010) was positive and void of any concern  
20 that CRAIG was unable to perform the duties of a police officer.

21        108.        On December 7, 2010, Defendant BALDIVIEZ, without a  
22 reasonable basis and in violation of the Americans with Disabilities Act, ordered  
23 Plaintiff CRAIG to undergo an intrusive fitness for duty examination for his  
24 conduct related to the two incidents above. Taking too long (20 minutes) to book a  
25 suspect on one occasion and using profanity in one sentence with a supervisor (and  
26 thereafter immediately apologizing) is insufficient facts to support a referral for an  
27 intrusive fitness for duty exam. It is objectively unreasonable.  
28

1       109. Plaintiff CRAIG refused to consent to the release of protected medical  
2 and mental health records compiled by Defendant GLICK to Defendant  
3 BALDIVIEZ. Based on information and belief, this angered the Defendants and it  
4 provided an additional motive for retaliation.

5       110. On December 31, 2010, Plaintiff CRAIG was placed on  
6 administrative leave do to Dr. Glick's finding that Plaintiff Craig was allegedly not  
7 fit.

8       111. On January 3, 2011, Plaintiff CRAIG consented to the release of  
9 information by Dr. Glick only to the extent that she was already authorized to  
10 release by law [California Civil Code §56.10 (c)(8)]. Plaintiff CRAIG did not  
11 consent to the release of detailed privileged psychological information. Despite the  
12 restricted scope of consent, Dr. Glick, unlawfully released confidential information  
13 in her report dated January 19, 2011. This blatant disregard of Claimant CRAIG's  
14 right to privacy and right to limit the scope of protected private information [see  
15 the Confidentiality of Medical Information Act, Civil Code §§56 et. seq.]  
16 demonstrated that Dr. Glick is not a neutral psychologist and is instead, performing  
17 retaliatory acts against Plaintiff CRAIG, on behalf of Defendant BALDIVIEZ, and  
18 as an agent of Defendant CITY of KING CITY.

19       112. Defendant CITY OF KING CITY retaliated against Plaintiff CRAIG,  
20 by sending him for a mandatory Fitness for Duty Examination without an objective  
21 basis. Plaintiff CRAIG was ultimately terminated based on the findings of the  
22 Defendant GLICK. As a direct and proximate result of the misconduct and  
23 unlawful actions of Defendants, and each of them, Plaintiff sustained severe and  
24 serious injury to his person, all to Plaintiffs damage in a sum to be shown  
25 according to proof. As a direct and proximate result of the Defendants' conduct,  
26 Plaintiff CRAIG has suffered and continues to suffer substantial losses in income,  
27 earnings, and benefits and has been damaged in his capacity to earn his salary, and  
28

1 has lost, and will continue to lose, employment benefits. Plaintiff has also suffered  
2 pain and suffering, mental anguish, and emotional distress.

3 113. General and special damages are sought according to proof.

4 114. Plaintiff CRAIG does not have a plain, speedy or adequate remedy at  
5 law to prevent future violations of their rights under the ADA, and therefore seeks  
6 extraordinary relief in the form of permanent injunctions, as hereafter described.  
7 Damages alone are inadequate and injunctive relief is sought to command  
8 Defendants to reinstate Plaintiff CRAIG's employment with the City, in order to  
9 place them in a position they would have been in, absent the unlawful conduct by  
10 Defendants.

### 11 **COUNT FIVE**

#### 12 **Violation of the Meyers-Milias-Brown Act**

13 **[Gov't Code §§ 3502, 3506; California Code of Civil Procedure §1085]**

14 ***Plaintiffs CRAIG, ANDRADE, and AGUAYO against Defendant CITY of KING***  
15 ***CITY***

16 115. Plaintiffs hereby incorporate each and every preceding paragraph as  
17 though set forth in full here. Plaintiffs seek a Writ of Mandate ordering the CITY  
18 of KING CITY to comply with Government Code §3502 and §3506.

19 116. Government Code sections 3502 and 3506 prohibit public agencies  
20 from interfering with, or discriminating against, public employees because of their  
21 participation in the activities of employee organizations for the purpose of  
22 representation on all matters of employer-employee relations. Plaintiffs seek a Writ  
23 of Mandate ordering the CITY of KING CITY to comply with Government Code  
24 §3502 and §3506.  
25

26 117. Section 3502 states, "[e]xcept as otherwise provided by the  
27 Legislature, public employees shall have the right to form, join, and participate in  
28 the activities of employee organizations of their own choosing for the purpose of

1 representation on all matters of employer-employee relations. Public employees  
2 also shall have the right to refuse to join or participate in the activities of employee  
3 organizations and shall have the right to represent themselves individually in their  
4 employment relations with the public agency.”

5 118. Section 3506 states, “[p]ublic agencies and employee organizations  
6 shall not interfere with, intimidate, restrain, coerce or discriminate against public  
7 employees because of their exercise of their rights under Section 3502.

8 119. Writ of Mandate is required to gain compliance with the Meyers-  
9 Milias-Brown Act. *Henneberque v. City of Culver* (1983) 147 Cal.App.3d 250, 254  
10 [“It has been held that a writ of mandate was proper to correct discrimination  
11 against employees who exercise their rights under the Meyers-Milias-Brown Act.”]

12 120. On September 25, 2010, Defendant BALDIVIEZ issued a memo to all  
13 employees with the King City Police Department that Plaintiff AGUAYO was  
14 placed on administrative leave and ordered not to have any contact with any  
15 employee. If anyone had any contact with Plaintiff  
16 AGUAYO they were to notify Defendant BALDIVIEZ immediately. The scope of  
17 this order clearly violated the Meyers Milias Brown Act. Public employees have  
18 the right to participate in union activities. This order effectively prevented all  
19 employees from having any sort of contact with Plaintiff AGUAYO.  
20

21 121. After Plaintiffs engaged in protected activities, including the vote  
22 of no confidence in the Chief July 30, 2010, the Defendant CITY of KING CITY,  
23 retaliated against Plaintiffs by issuing a blanket no contact order between Plaintiff  
24 AGUAYO and Plaintiff’s ANDRADE and CRAIG. All three Plaintiffs were board  
25 members of the King City Police Officers Association, and the blanket no contact  
26 order was implemented in order to interfere with their union activities. Defendant  
27 BALDIVIEZ subjected AGUAYO and ANDRADE to adverse employment  
28 actions for allegedly violating this unlawful order. Plaintiff AGUAYO was

ultimately terminated and ANDRADE was suspended. Plaintiff CRAIG was also terminated for engaging in protected activities.

122. Plaintiffs engaged in activities protected by the Meyers Miliars Brown Act. As a direct result of this participation, including the vote of no confidence on July 30, 2010, Defendant CITY of KING CITY took the aforementioned adverse actions against Plaintiffs. Absent said speech activities, the Defendant would not have taken said actions. In doing the things alleged herein, Defendant CITY of KING CITY violated the rights of Plaintiffs as set forth herein.

123. As a direct and proximate result of the misconduct and unlawful actions of Defendants, and each of them, Plaintiffs sustained severe and serious injury to their person, all to Plaintiffs damage in a sum to be shown according to proof. As a direct and proximate result of the Defendants' conduct, Plaintiffs have suffered and continues to suffer substantial losses in income, earnings, and benefits and has been damaged in their capacity to earn their salary, and have lost, and will continue to lose, employment benefits. Plaintiffs have also suffered pain and suffering, mental anguish, and emotional distress.

124. General and special damages are sought according to proof.

125. Plaintiffs have exhausted all administrative remedies to compel the relief sought herein, including the filing of a Claim for Damages which has been rejected by operation of law.

### **COUNT SIX**

#### **Violations of Peace Officer Bill of Rights**

**[California Government Code §§ 3302(a), 3309.5]**

***Plaintiffs CRAIG, ANDRADE, and AGUAYO against Defendant CITY of KING CITY***

1           126.           Plaintiffs hereby incorporate each and every preceding  
2 paragraph as though set forth in full here.

3           128.           California Government Code section 3302(a) states that  
4 “[e]xcept as otherwise provided by law, or whenever on duty or in uniform, no  
5 public safety officer shall be prohibited from engaging, or be coerced or required  
6 to engage, in political activity.”

7           129.           On September 25, 2010, Defendant BALDIVIEZ issued a  
8 memo to all employees with the King City Police Department that Plaintiff  
9 AGUAYO was placed on administrative leave and ordered not to have any contact  
10 with any employee. If anyone had any contact with Plaintiff AGUAYO they were  
11 to notify Defendant BALDIVIEZ immediately. The scope of this order clearly  
12 violated the Peace Officer Bill of Rights Act. Police officers have the right to  
13 participate in union activities. This order effectively prevented all employees from  
14 having any sort of contact with Plaintiff AGUAYO.

15           130.           After Plaintiffs engaged in protected activities, including the  
16 vote of no confidence in the Chief July 30, 2010, the Defendant CITY of KING  
17 CITY, retaliated against Plaintiffs by issuing a blanket no contact order between  
18 Plaintiff AGUAYO and Plaintiff’s ANDRADE and CRAIG. All three Plaintiffs  
19 were board members of the King City Police Officers Association, and the blanket  
20 no contact order was implemented in order to interfere with their union activities.  
21 Defendant BALDIVIEZ subjected AGUAYO and ANDRADE to adverse  
22 employment actions for allegedly violating this unlawful order. Plaintiff  
23 AGUAYO was ultimately terminated and ANDRADE was suspended. Plaintiff  
24 CRAIG was also terminated for engaging in protected activities.

25           131.           Plaintiffs engaged in activities protected by this statute. As a  
26 direct result of this participation, including the vote of no confidence on July 30,  
27 2010, Defendant CITY of KING CITY took the aforementioned adverse actions  
28

1 against Plaintiffs. Absent said speech activities, the Defendant would not have  
2 taken said actions. In doing the things alleged herein, Defendant CITY of KING  
3 CITY violated the rights of Plaintiff as set forth herein.

4 132. As a direct and proximate result of the misconduct and  
5 unlawful actions of Defendants, and each of them, Plaintiffs sustained severe and  
6 serious injury to their person, all to Plaintiffs damage in a sum to be shown  
7 according to proof. As a direct and proximate result of the Defendants' conduct,  
8 Plaintiffs have suffered and continues to suffer substantial losses in income,  
9 earnings, and benefits and has been damaged in their capacity to earn their salary,  
10 and have lost, and will continue to lose, employment benefits. Plaintiffs have also  
11 suffered pain and suffering, mental anguish, and emotional distress.

12 133. General and special damages are sought according to proof.

13 134. Plaintiff has exhausted all administrative remedies to compel  
14 the relief sought herein, including the filing of a Claim for Damages which has  
15 been rejected by operation of law.

16 135. Government Code Section 3309.5 provides that where it finds  
17 that a public safety department has violated any of the provisions of the Public  
18 Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300 et seq.),  
19 to render appropriate injunctive or other extraordinary relief to remedy the  
20 violation and to prevent future violations of a like or similar nature including, but  
21 not limited to the granting of a temporary restraining order, preliminary or  
22 permanent injunction prohibiting the public safety department from taking any  
23 punitive action against the public safety officer.

24 136. Defendant CITY of KING CITY employs law enforcement  
25 personnel, including Plaintiffs, and is charged with the duty of acting in  
26 accordance with the requirements of state law, including Government Code section  
27 3300 et seq.  
28



1 subdivision (b) or (c)."

2 142. Civil Code §56.10(c)(8) states, "[a] provider of health care or  
3 health care service plan that has created medical information as a result of  
4 employment-related health care services to an employee conducted at the specific  
5 prior written request and expense of the employer may disclose to the employee's  
6 employer that part of the information that:

7 (A) Is relevant in a lawsuit, arbitration, grievance, or other  
8 claim or challenge to which the employer and the employee are  
9 parties and in which the patient has placed in issue his or her  
10 medical history, mental or physical condition, or treatment,  
11 provided that information may only be used or disclosed in  
12 connection with that proceeding.

13 (B) Describes functional limitations of the patient that may  
14 entitle the patient to leave from work for medical reasons or  
15 limit the patient's fitness to perform his or her present  
16 employment, provided that no statement of medical cause is  
17 included in the information disclosed."  
18

19 143. As such, absent consent from the employee, an employer  
20 has restricted access to the employee's medical records. Civil Code §56.35  
21 states, "[i]n addition to any other remedies available at law, a patient whose  
22 medical information has been used or disclosed in violation of Section 56.10  
23 or 56.104 or 56.20 or subdivision (a) of Section 56.26 and who has sustained  
24 economic loss or personal injury there from may recover compensatory  
25 damages, punitive damages not to exceed three thousand dollars (\$3,000),  
26 attorneys' fees not to exceed one thousand dollars (\$1,000), and the costs of  
27 litigation."  
28

1           145.       On January 3, 2011, Plaintiff CRAIG consented to the release of  
2 information by Dr. Glick only to the extent that she was already authorized to  
3 release by law [California Civil Code §56.10 (c)(8)].

4           146.       CRAIG did not consent to the release of detailed privileged  
5 psychological information. Despite the restricted scope of consent, Defendant  
6 GLICK unlawfully released confidential information in her report dated January  
7 19, 2011. This blatant disregard of Plaintiff CRAIG's right to privacy and right to  
8 limit the scope of protected private information  
9 demonstrated that Dr. Glick is not a neutral psychologist and is instead, performing  
10 retaliatory acts against Plaintiff CRAIG, on behalf of Defendant BALDIVIEZ, and  
11 as an agent of Defendant CITY of KING CITY.  
12

13           147.       Plaintiff CRAIG was ultimately terminated based on the findings of  
14 the Defendant GLICK. As a direct and proximate result of the misconduct and  
15 unlawful actions of the Defendants CITY of KING CITY and GLICK, and each of  
16 them, Plaintiff sustained severe and serious injury to his person, all to Plaintiff's  
17 damage in a sum to be shown according to proof. As a direct and proximate result  
18 of the Defendants' conduct, Plaintiff CRAIG has suffered and continues to suffer  
19 substantial losses in income, earnings, and benefits and has been damaged in his  
20 capacity to earn his salary, and has lost, and will continue to lose, employment  
21 benefits. Plaintiff has also suffered pain and suffering, mental anguish, and  
22 emotional distress.

### 23                               COUNT EIGHT

#### 24                               **Violation of the Confidentiality of Medical Information Act**

#### 25                               **[Civil Code §56.20]**

#### 26                               ***Plaintiff CRAIG against CITY of KING CITY***

27           148.       Plaintiff CRAIG repeats and re-alleges each and every  
28 allegation set forth above, and incorporates same by reference as though set forth  
fully herein.

1           149.           Section 56.20 of the CMIA provides: “No employer shall use,  
2 disclose, or knowingly permit its employees or agents to use or disclose medical  
3 information which the employer possesses pertaining to its employees without the  
4 patient having first signed an authorization . . . .” Plaintiff CRAIG was eventually  
5 fired based upon the unlawful disclosure of medical information by Defendant  
6 GLICK. As a result, Defendant, City of KING CITY violated Section 56.20(c) of  
7 the CMIA. In addition, subsection (b) provides that “no employee shall be  
8 discriminated against in terms or conditions of employment due to that employee’s  
9 refusal to sign an authorization.” “An employer ‘discriminates’ against an  
10 employee in violation of [California Civil Code] section 56.20, subdivision (b), if it  
11 improperly retaliates against or penalizes an employee for refusing to authorize the  
12 employee’s healthcare provider to disclose confidential medical information to the  
13 employers or others...” Plaintiff CRAIG was fired for refusing to allow the  
14 unlawful disclosure of his medical information.

15           150.           As a direct and proximate result of the misconduct and  
16 unlawfulness of Defendant, and the resulting termination of Plaintiff’s employ,  
17 Plaintiff CRAIG has sustained severe and serious injury to his person, all to  
18 Plaintiff’s damage in a sum to be shown according to proof. As a direct and  
19 proximate result of the Defendant’s conduct, Plaintiff has suffered and continues to  
20 suffer substantial losses in income, earnings, and benefits and has been damaged in  
21 his capacity to earn his salary, and has lost, and will continue to lose, employment  
22 benefits. Plaintiff has also suffered pain and suffering, and mental anguish and  
23 emotional distress.

24           151.           The aforementioned acts directed towards Plaintiff CRAIG  
25 were carried out with a conscious disregard of Plaintiff’s rights and with the intent  
26 to vex, injure and annoy Plaintiff, such as to constitute oppression, fraud or malice.  
27  
28

**COUNT NINE**

**Violation of the Robbins-Rosenthal Fair Debt Collections Practices Act**

**[Civil Code §1788 et. seq]**

***Plaintiffs AGUAYO against Defendant CITY of KING CITY and STEWART dba  
Aaron's Sales and Lease***

152. Plaintiff AGUAYO hereby incorporates each and every preceding paragraph as though set forth in full here.

153. According to Civil Code §1788.12(a), no debt collector shall collect or attempt to collect a debt by communicating with the debtor's employer unless the communication is necessary to the collection of the debt. If the communication is necessary to the collection of a debt, it must first be in writing.

154. In October 2010, Defendant BALDIVIEZ allegedly received a call from Leticia Diaz, a manager of Defendant STEWART dba Aaron's Sales and Lease, and she stated that Plaintiff AGUAYO was behind in his payments. This communication was not a written communication as required by Civil Code §1788.12(a).

155. Defendants BALDIVIEZ and CITY of KING CITY used information improperly disclosed by Defendant STEWART dba Aaron's Sales and Lease in order to subject AGUAYO to termination.

156. Civil Code §1788.30 allows for Plaintiff AGUAYO to institute a civil suit for damages for a violation of this statute

157. Plaintiff AGUAYO did not consent to the communication by Defendant STEWART dba Aaron's Sales and Lease to his employer Defendant BALDIVIEZ and CITY of KING CITY.

**COUNT TEN**

**Violation of the Fair Debt Collection Practices Act**

**[15 U.S.C.A. §1692]**

***Plaintiff AGUAYO against Defendant CITY of KING CITY and STEWART dba  
Aaron's Sales and Lease***

158. Plaintiff AGUAYO hereby incorporates each and every preceding paragraph as though set forth in full here.

159. According to 15 U.S.C.A §1692c(b), "[e]xcept as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector."

160. U.S.C.A §1692b(2) states that the debt collector cannot disclose to a third party that the consumer owes a debt.

161. In October 2010, Defendant BALDIVIEZ allegedly received a call from Leticia Diaz, a manager of Defendant STEWART dba Aaron's Sales and Lease, and she stated that Plaintiff AGUAYO was behind in his payments. This release of information to Defendant BALDIVIEZ violated the Fair Debt Collection Practices Act.

161. Plaintiff AGUAYO did not consent to the communication by Defendant STEWART dba Aaron's Sales and Lease to his employer Defendant BALDIVIEZ and CITY of KING CITY.



1 168. Defendants BALDIVIEZ and CITY of KING CITY used information  
2 improperly disclosed by Defendant STEWART dba Aaron's Sales and Lease in  
3 order to subject ANDRADE to suspension.

4 169. Civil Code §1798.84 allows for Plaintiff ANDRADE to institute a  
5 civil suit for a violation of this statute.

6 **VI.**  
7 **PRAYER**

8 WHEREFORE, Plaintiffs prays:

- 9 1. For general, special, compensatory (including lost wages and  
10 benefits), exemplary and punitive damages according to proof;  
11 2. Peremptory Writ of Mandate issue pursuant to Code of Civil  
12 Procedure §§ 1085, 1086 compelling Defendants to  
13 immediately comply with Government Code §3502 and §3506;  
14 3. For costs of suit;  
15 4. For attorneys fees as permitted by law;  
16 5. For civil penalties as permitted by law;  
17 6. For any injunctive relief as described above; and  
18 7. For any and all other appropriate relief the Court deems necessary.  
19

20 Dated: May 20, 2011

LACKIE DAMMEIR & MCGILL, APC

21  
22  
23 

24 Russell M. Perry,  
25 Attorneys for Plaintiffs,  
26 CRAIG, AGUAYO and ANDRADE  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs CRAIG, AGUAYO, and ANDRADE hereby demand a jury trial  
under F.R. Civ. P., Rule 38 and C.D. Local Rule 38-1.

Dated: May 20, 2011

LACKIE DAMMEIER & MCGILL, APC



Russell M. Perry,  
Attorney for Plaintiffs  
CRAIG, AGUAYO and ANDRADE

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge George King and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

**CV11- 4399 GHK (AGR~~x~~)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

ORIGINAL

## Name &amp; Address:

Russell M. Perry, (SBN 246252)  
 russell@policeattorney.com  
 LACKIE, DAMMEIER & MCGILL, APC  
 367 North Second Avenue  
 Upland, CA 91786

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER CRAIG, ABRAHAM AGUAYO,  
 and JAIME ANDRADE,

PLAINTIFF(S)

v.

CITY OF KING CITY a municipal corporation; NICK  
 BALDIVIEZ, individually and as Chief of Police for  
 the King City Police Department; (See Attachment)

DEFENDANT(S).

CASE NUMBER

CV11-04399 GHK(AGRx)

## SUMMONS

TO: DEFENDANT(S): CITY OF KING CITY, a municipal corporation; NICK BALDIVIEZ, individually  
 and as Chief of Police for the King City Police Department; (See Attachment)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ \_\_\_\_\_ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Russell M. Perry, whose address is Lackie, Dammeier & McGill, 367 North Second Avenue, Upland, CA 91786. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

MAY 23 2011

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

SHORT TITLE:

— Craig, et al v. City of King City, et al

CASE NUMBER:

1 Attachment to SUMMONS : Additional Defendants

2

3 ...MICHAEL POWERS, individually and as City Manager for the King City; MARK BAKER,  
 4 individually and as Sergeant for the King City Police Department; JERRY HUNTER, individually and as  
 5 "acting" Sergeant for the King City Police Department; MYRNA GLICK, individually, and as an agent for  
 6 King City; THE STEWART, LLC, dba Aaron's Sales and Lease; and DOES 1 THROUGH 10  
 7 INCLUSIVE

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(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, **not** line numbers):

27

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 2

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) Christopher Craig, Abraham Aguayo, and Jaime Andrade,	<b>DEFENDANTS</b> City of King City, a municipal corporation; Nick Baldiviez, individually and as Chief of Police for King City Police Department; Michael Powers, individually and as (See Attachment)
<b>(b)</b> County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): Monterey County	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): Monterey County
<b>(c)</b> Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Russell M. Perry, Esq. Lackie Dammeier McGill, APC 367 N. Second Avenue Upland, CA 91786 Tel: (909) 985-4003	Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff     ☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant     ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only**  
(Place an X in one box for plaintiff and one for defendant.)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1 Original Proceeding     ☐ 2 Removed from State Court     ☐ 3 Remanded from Appellate Court     ☐ 4 Reinstated or Reopened     ☐ 5 Transferred from another district (specify):     ☐ 6 Multi-District Litigation     ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes     ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION** under F.R.C.P. 23: ☐ Yes     ☒ No**MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
42 U.S.C.**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed? ☒ No     ☐ Yes

If yes, list case number(s):

**FOR OFFICE USE ONLY:** Case Number: CV11-04399

SHORT TITLE: — Craig, et al v. City of King City, et al	CASE NUMBER:
--	--------------

1 Attachment to CIVIL COVER SHEET : Additional Defendants

2

3 ... City Manager for the King City; MARK BAKER, individually and as Sergeant for the King City Police

4 Department; JERRY HUNTER, individually and as "acting" Sergeant for the King City Police

5 Department; MYRNA GLICK, individually, and as an agent for King City; THE STEWART, LLC, dba

6 Aaron's Sales and Lease; and DOES 1 THROUGH 10 INCLUSIVE

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26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, **not** line

27 numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 2

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

## Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Monterey County

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Monterey County

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Monterey County

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_

Date

5/20/11

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))